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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91172497
Party	Plaintiff Johnson & Johnson
Correspondence Address	Mary Pat A. Weyback Drinker Biddle & Reath LLP 1500 K Street, N.W., Suite 1100 Washington, DC 20005-1209 UNITED STATES norm.st.landau@dbi.com
Submission	Motion to Compel Discovery
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Signature	/Jaye S. Yung/
Date	10/08/2007
Attachments	HEALTHY TOOTHBRUSH.pdf ( 24 pages )(1044706 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In re Ser. No. 76/635,772 – HEALTHY TOOTHBRUSH;  
Published April 25, 2006.**

<u>JOHNSON &amp; JOHNSON,</u>	:	
Opposer,	:	
v.	:	Opposition No. 91-172,497
MICHAEL F. BRICE,	:	
<u>Applicant.</u>	:	

**OPPOSER'S MOTION TO COMPEL DISCOVERY AND  
TO RESET DISCOVERY AND TESTIMONY PERIODS**

Opposer, Johnson & Johnson, hereby moves to compel the Applicant, Michael F. Brice, to respond to Opposer's First Set of Interrogatories and First Set of Requests for Production of Documents and Things, each served on July 11, 2007, and hereby moves that the Board reset Opposer's discovery period and the testimony periods in this opposition. Copies of Opposer's July discovery requests are attached as Exhibits A and B hereto.

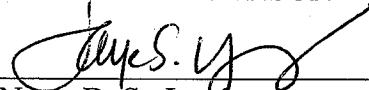
As of the filing date of this Motion to Compel, Applicant has not responded to Opposer's Interrogatories or Document Requests, and has accordingly waived its rights to object thereto. Further, Opposer's counsel has contacted Applicant's counsel to obtain Applicant's responses to Opposer's discovery requests. Despite being aware of its obligation, Applicant continues to withhold discovery responses.

In view of the foregoing, Opposer respectfully requests that Applicant be ordered to respond, in full, and without objection, to the Interrogatories and Document Requests served by Opposer on July 11, 2007. Opposer further moves to extend its discovery period to close 60

days from the Board's decision on this Motion to Compel, and that the testimony periods be reset accordingly.

Respectfully submitted,

JOHNSON & JOHNSON



Norm D. St. Landau

Theodore F. Haussman

Jaye S. Yung

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*Counsel for Opposer*

\* Admitted in New York only.

Supervised by principals of the firm.

## **EXHIBIT A**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In re Ser. No. 76/635,772 – HEALTHY TOOTHBRUSH;  
Published April 25, 2006.**

<u>JOHNSON &amp; JOHNSON,</u>	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91-172,497
	:	
MICHAEL F. BRICE,	:	
	:	
<u>Applicant.</u>	:	

**OPPOSER FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, the Opposer, Johnson & Johnson ("Opposer") serves its First Set of Interrogatories upon Applicant, Michael F. Brice ("Applicant"). Opposer hereby requests that Applicant respond to these Interrogatories, subject to the following definitions and instructions, within thirty (30) days of the date of service hereof.

The full text of the Definitions and Instructions set forth below shall be deemed incorporated by reference into each Interrogatory.

**DEFINITIONS AND INSTRUCTIONS**

- A. "Opposer" shall mean Johnson & Johnson, including, without limitation, any predecessor(s) in interest, as well as any parent, subsidiary, affiliate, division or related companies (as defined by 15 U.S.C. §1127).
- B. "Applicant" shall mean Michael F. Brice, including, without limitation, any predecessor(s) in interest, as well as any parent, subsidiary, affiliate, division or related

companies (as defined by 15 U.S.C. §1127), and the officers, directors, employees, agents, representatives, and other personnel thereof.

- C. The terms "you," "your," and "yours" refer to Applicant, as that term is defined herein.
- D. "Person" or "Persons" shall mean any individual, association, business, partnership, corporation, firm, organization, or entity.
- E. "Documents" as used herein shall mean every original and every non-identical copy of any original of all mechanically written, handwritten, typed or printed material, electronically stored data, e-mail messages, web site pages, web site printouts, microfilm, microfiche, sound recordings, films, photographs, slides, and other physical objects of every kind and description containing stored information, including but not limited to all transcripts, letters, notes, memoranda, tapes, records, telegrams, periodicals, pamphlets, brochures, circulars, advertisements, leaflets, reports, research studies, test data, working papers, drawings, maps, sketches, diagrams, blueprints, graphs, charts, diaries, logs, agreements, contracts, rough drafts, analyses, ledgers, inventories, financial information, books of account, understandings, minutes of meetings, minute books, resolutions, assignments, computer printouts, purchase orders, invoices, bills of lading, written memoranda or notes of oral communications, and any other tangible thing of whatever nature.
- F. "Identify" or "state the identity of" means:
  - 1. In the case of a person, to state the name; last known residence; employer or business affiliation; and occupation and business position held.

2. In the case of a company, to state the name; if incorporated, the place of incorporation; the principal place of business; and the identity of the person(s) having knowledge of the matter with respect to which the company is named.
  3. In the case of a document, to state the identity of the person(s) who prepared it; the sender and recipient; the title or a description of the general nature of the subject matter; the date of preparation; the date and manner of distribution and publication; the location of each copy and the identity of the present custodian; and the identity of the person(s) who can identify it.
  4. In the case of an act or event, to state a complete description of the act or event; when it occurred; where it occurred; the identity of the person(s) performing said act (or omission); the identity of all persons who have knowledge, information or belief about the act; when the act, event, or omission first became known; the circumstances; the manner in which such knowledge was first obtained; and the documents or other writings memorializing the instance.
- G. Words of gender shall be construed as including all genders, without limitation.
- H. Words in the singular shall be construed to mean the plural or vice versa as appropriate.
- I. "And" and "Or" shall mean "and/or".
- J. The terms "refer," "referring to," "relate," or "relating to" shall mean having a legal, factual or logical connection, relationship, correlation, or association with the subject matter of the request.
- K. The words "communication" or "communications" shall mean all meetings, conversations, conferences, discussions, correspondence, messages, telegrams, telefaxes,

facsimiles, e-mail, mailgrams, and all oral and written expressions or other occurrences whereby thoughts, opinions or data are transmitted between two or more persons.

- L. "Oral communication" shall mean any verbal conversation or other statement from one person to another, including but not limited to, any interview, conference, meeting or telephone conversation.
- M. Unless otherwise stated, "Applicant's Mark" shall mean the HEALTHY TOOTHBRUSH mark shown in Application Serial No. 76/635,772 – HEALTHY TOOTHBRUSH.
- N. Unless otherwise stated, "Applicant's Goods" shall mean the goods identified in Application Serial No. 76/635,772 – HEALTHY TOOTHBRUSH, namely toothbrushes in Class 21.
- O. Unless otherwise stated, "Application" shall mean Applicant's Application Ser. No. 76/635,772.
- P. The terms "concerning," or "concern," shall mean memorializing, mentioning, to be connected with, comprising, consisting, indicating, describing, referring, relating to, evidencing, showing, discussing, or involving in any way whatsoever the subject matter of the Interrogatory.
- Q. If you object to any Interrogatory or Interrogatory subpart, or otherwise withhold responsive information because of the claim of privilege, work product, or other grounds:
  - 1. identify the Interrogatory question and subpart to which objection or claim of privilege is made;



2. state whether the information is found in a document, oral communication, or in some other form;
  3. identify all grounds for objection or assertion of privilege, and set forth the factual basis for assertion of the objection or claim of privilege;
  4. identify the information withheld by description of the topic or subject matter, the date of the communication, and the participants; and
  5. identify all persons having knowledge of any facts relating to your claim of privilege.
- R. If you object to any portion of an Interrogatory, explain your objection and answer the remainder.
- S. The information requested herein is intended to include all knowledge and information of Applicant in its individual and corporate capacity, and includes, unless otherwise specifically indicated, its predecessors, agents, legal representatives, divisions, subsidiary entities, both controlled and wholly-owned, and all other related companies (as defined by 15 U.S.C. § 1127), and the past and present officers, directors, employees, agents, representatives, attorneys and other personnel thereof, as well as each entity through which Applicant claims the right to use Applicant's Mark.
- T. These Interrogatories are deemed continuing in nature, requiring Applicant to serve upon Opposer further responses promptly after Applicant has acquired additional knowledge or information.
- U. Unless otherwise stated, the geographic scope of these Interrogatories is the United States.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1**

Identify all products and services in connection with which Applicant has used, uses, or has a present bona fide intention to use Applicant's Mark or any other mark incorporating the terms "health," "healthy," "toothbrush(es)" and/or "healthy toothbrush(es)".

### **INTERROGATORY NO. 2**

For each product and service identified in response to Interrogatory No. 1:

- A. Identify the mark used in connection with the product or service.
- B. State the date (month, day, year) of first use of such mark in connection therewith.
- C. Describe the manner and circumstance of such first use, including but not limited to the identity of the first recipient of the goods and/or services.
- D. Indicate whether the mark is currently in use. If so, specify whether the use has been continuous. If the mark is not currently in use with the products and/or services, state the last known date of use, list all periods when there has been no use, and the reasons for such non-use.
- E. Identify the channels of trade generally, as well as specific outlets through which the products and services identified by the mark have been offered, are offered, or intended to be offered.
- F. Identify the types of users and/or purchasers.
- G. State the annual revenues and profits derived therefrom.
- H. State the annual dollar amount spent by Applicant on advertising.
- I. Identify the person(s) most knowledgeable about the information stated in answers to subparts A through H of this Interrogatory.

**INTERROGATORY NO. 3**

Identify the persons with primary knowledge concerning Applicant's sale or intent to sell products or services in connection with Applicant's Mark.

**INTERROGATORY NO. 4**

Identify the persons primarily involved in Applicant's selection of Applicant's Mark.

**INTERROGATORY NO. 5**

Identify and describe the facts relating to the selection and adoption of Applicant's Mark, including without limitation, the reasons for the selection, the date (month, day, year) of meetings or communications at which these topics were discussed and the identity of all persons who participated in or were present at such meetings or communications or otherwise having knowledge of such topics.

**INTERROGATORY NO. 6**

Identify the principal persons or entities, including but not limited to advertising agencies, market research firms, or web site development firms, who designed or created advertisements, packaging, catalogues, annual reports, signs, promotional materials, informational materials, handbills, stationery, business cards, decals, labels or other materials displaying Applicant's Mark.

For each such person or entity, specify:

- A. what items were designed, created, printed or manufactured by it;
- B. the medium in which the item was produced;
- C. when work on the item was completed;
- D. the date(s) (month, day, year) on which the item was distributed;
- E. the quantities of the item that were distributed;
- F. the persons to whom the item was distributed; and

G. what products or services were referred to in or promoted by the item.

**INTERROGATORY NO. 7**

To the extent not identified in Interrogatory No. 6, identify all third parties, including advertising agencies, marketing firms, web site development firms, distributors and other persons, involved in promoting, marketing and/or providing the products and services identified by Applicant's Mark, and state the location (city, state) and dates (month, day, year) each was acting for Applicant.

**INTERROGATORY NO. 8**

Identify all third parties of whom Applicant is aware, who are using or have used marks in connection with personal care goods, including but not limited to oral health or hygiene products, that include the terms "health," "healthy," "toothbrush(es)" and/or "healthy toothbrush(es)".

**INTERROGATORY NO. 9**

For each party identified in Interrogatory No. 8, list the mark(s) used thereby and the products or services in connection with which the mark(s) is used or has been used.

**INTERROGATORY NO. 10**

Identify each instance Applicant uses the terms "health," "healthy," "toothbrush(es)" and/or "healthy toothbrush(es)" in conjunction with, or when referring to, Applicant's Goods or other personal care goods, including but not limited to oral health or hygiene products marketed by Applicant.

**INTERROGATORY NO. 11**

Describe the extent to which Applicant's Goods have beneficial health effects, namely the extent to which Applicant's Goods promote oral health or hygiene.

**INTERROGATORY NO. 12**

Describe the relevance and importance, if any, of the qualities of promoting or maintaining health in connection with the marketing and sale of Applicant's Goods or other personal care goods, including without limitation oral health and hygiene products marketed by Applicant.

**INTERROGATORY NO. 13**

Identify by name, date (month, day, year) and location (city, state) all trade shows in which Applicant has sold, exhibited, or promoted goods and/or services identified by Applicant's Mark.

**INTERROGATORY NO. 14**

Identify the address(es) of any Internet website owned and/or operated by Applicant that contains Applicant's Mark in the domain name itself, or promotes the products and services identified or intended to be identified by Applicant's Mark.

**INTERROGATORY NO. 15**

For each website identified in Interrogatory No. 13, identify the persons who participated in the creation, development and design of the Internet website(s).

**INTERROGATORY NO. 16**

For each website identified in Interrogatory No. 13, identify the persons responsible for maintaining and operating the Internet website(s), and for receiving and reviewing incoming e-mail at or through such website(s).

**INTERROGATORY NO. 17**

Identify each controversy, including litigation proceedings, whether judicial or administrative, involving Applicant's Mark and/or the goods or services identified by Applicant's Mark, including:

- (a) the title, civil action number, tribunal and case citation (if reported) of each

proceeding;

- (b) the date (month, day, year), nature and basis of the controversy;
- (c) the disposition of the proceeding, including the terms of any settlement of the controversy and the date (month, day, year) thereof; and
- (d) if not disposed of, its current status.

**INTERROGATORY NO. 18**

Identify and describe all facts relating to each assignment, merger, license, change of name or other transfer, if any, referring or relating to Applicant's Mark, including the identity of the parties, the nature and the date (month, day, year) of the assignment, license, change of name or other transfer.

**INTERROGATORY NO. 19**

Identify and describe all facts relating to each settlement agreement, co-existence agreement, and consent agreement referring or relating to Applicant's Mark, including the identity of the parties and date (month, day, year) of the agreement.

**INTERROGATORY NO. 20**

Identify each person or entity that has ever objected to Applicant's use or registration of one or more of Applicant's Marks.

**INTERROGATORY NO. 21**

State whether any person or entity has ever objected to Applicant's use, registration, or attempted registration of a trademark, service mark, or trade name on the basis that the proposed mark is generic or merely descriptive, and if so, identify the party who objected and describe with particularity the outcome, including, but not limited to, whether Applicant abandoned the mark or entered a disclaimer of descriptive portions of the mark.

**INTERROGATORY NO. 22**

Identify by name, address, and qualification each expert whom you may call to testify in this matter during the testimonial period and state the substance of the facts and opinion(s) to which each such expert is expected to testify and a summary of the grounds for each such opinion.

**INTERROGATORY NO. 23**

Identify with particularity each investigation conducted by or on behalf of Applicant in connection with Applicant's Mark to determine its availability as a trademark, service mark or trade name, to determine its registrability as a trademark or service mark, to determine the extent to which others may be using or have registered the same or similar term, or for any other reason.

**INTERROGATORY NO. 24**

State whether Applicant has ever conducted or caused to be conducted any research, investigation, or survey, whether formal or informal, to determine the commercial impression that is made upon the public or the trade upon viewing Applicant's Mark, and if so, identify the party conducting the research, investigation or survey, and describe with particularity the results or conclusions of the same.

**INTERROGATORY NO. 25**

To the extent not otherwise identified in Interrogatories 23 and 24, identify the persons with primary knowledge concerning any market research, searches, investigations, reports, surveys, or studies involving, relating or referring to Applicant's Mark.

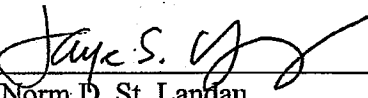
**INTERROGATORY NO. 26**

Identify the persons who have or had managerial responsibilities involving the marketing and/or provision of products and/or services offered or intended to be offered under Applicant's Mark.

**INTERROGATORY NO. 27**

Identify each person who answered or assisted in the preparation of the answers to the foregoing Interrogatories, and identify each Interrogatory that such person answered or assisted in answering.

Respectfully submitted,  
JOHNSON & JOHNSON

By:   
Norm D. St. Landau  
Jaye S. Yung  
DRINKER BIDDLE & REATH LLP  
1500 K Street, N.W., Suite 1100  
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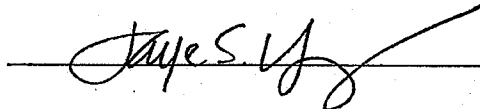
*Counsel for Opposer/Petitioner Johnson & Johnson*



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES** was served on Applicant this 11<sup>th</sup> day of July 2007, via first-class mail to:

Joseph C. Colaianni, Esq.  
Patton Boggs LLP  
2550 M Street, N.W., Suite 500  
Washington, DC 20037

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## **EXHIBIT B**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In re Ser. No. 76/635,772 – HEALTHY TOOTHBRUSH;  
Published April 25, 2006.**

<u>JOHNSON &amp; JOHNSON,</u>	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91-172,497
	:	
MICHAEL F. BRICE,	:	
	:	
<u>Applicant.</u>	:	

**OPPOSER'S FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, the Opposer, Johnson & Johnson ("Opposer") requests that Applicant, Michael F. Brice ("Applicant") produce the documents requested herein for inspection and copying at the offices of Drinker Biddle & Reath LLP at 1500 K Street N.W., Suite 1100, Washington, D.C. 20005, within thirty (30) days of the date hereof.

These Document Requests are intended to be continuing in nature. Any information discovered after timely service of the answers should be brought to the attention of Opposer's counsel through supplemental answers within a reasonable time after discovery in accordance with the applicable rules.

**DEFINITIONS AND INSTRUCTIONS**

The instructions and definitions of Opposer's First Set of Interrogatories are incorporated by reference as though set forth fully herein, substituting the word(s) "Document Request(s)" for "Interrogatory(ies)" where appropriate.

### DOCUMENTS REQUESTED

1. All documents identified or referred to in Applicant's answers to Opposer's First Set of Interrogatories.
2. All documents relied upon or otherwise consulted in preparing Applicant's answers to Opposer's First Set of Interrogatories.
3. All documents sent to or received from the United States Patent and Trademark Office in connection with Applicant's Application to register Applicant's Mark in connection with Ser. No. 76/635,772 – HEALTHY TOOTHBRUSH.
4. All documents identified or referred to in Applicant's Application to register Applicant's Mark filed with the United States Patent and Trademark Office in connection with Ser. No. 76/635,772 – HEALTHY TOOTHBRUSH.
5. Two (2) specimens of each product (including specific variations or models of each) that is, was, or will be offered for sale under Applicant's Mark or any other mark adopted by Applicant incorporating the terms "health," "healthy," "toothbrush(es)," and/or "healthy toothbrush(es)".
6. Two (2) specimens of each label, brochure, tag, trade dress, package or the like ever used or planned to be used by Applicant in connection with the sale, offer for sale or distribution of any good or service bearing Applicant's Mark or any other mark adopted by Applicant incorporating the terms "health," "healthy," "toothbrush(es)," and/or "healthy toothbrush(es)".
7. All documents referring or relating to Applicant's creation, consideration, selection, adoption, and first use of Applicant's Mark, including without limitation any and all internal correspondence and emails relating to same.

8. All documents referring or relating to marketing studies, focus group studies, polls or surveys conducted by or caused to be conducted or obtained for Applicant relating to Applicant's Mark or any other mark adopted by Applicant incorporating the terms "health," "healthy," "toothbrush(es)," and/or "healthy toothbrush(es)".

9. All documents consisting of, referring or relating to any trademark search conducted or caused to be conducted by Applicant relating to Applicant's Mark or any other mark adopted by Applicant incorporating the terms "health," "healthy," "toothbrush(es)," and/or "healthy toothbrush(es)".

10. All documents referring or relating to the actual or anticipated marketing, distribution, sale, advertising, or promotion of each product bearing Applicant's Mark or any other mark adopted by Applicant incorporating the terms "health," "healthy," "toothbrush(es)," and/or "healthy toothbrush(es)".

11. All documents referring or relating to the amount of money spent, or expected to be spent, by Applicant in connection with its marketing, advertising or promotion of each of Applicant's goods bearing Applicant's Mark or any other mark adopted by Applicant incorporating the terms "health," "healthy," "toothbrush(es)," and/or "healthy toothbrush(es)".

12. All documents tending to show whether or not any of the goods sold or intended to be sold under Applicant's Mark have an effect on consumer health, including without limitation the promotion or maintenance of oral health or hygiene.

13. All documents describing or referring to any of the goods sold or intended to be sold under Applicant's Mark as having an effect on consumer health, including without limitation the promotion or maintenance of oral health or hygiene.

14. All documents indicating the function, goal or purpose of each of the goods sold or intended to be sold under Applicant's Mark.

15. All documents consisting of, referring to, or generated in connection with any research and development conducted by Applicant or on Applicant's behalf regarding the effect on consumer health, including without limitation the promotion of oral health and hygiene, of any product now or ever sold or intended to be sold under Applicant's Mark.

16. All documents consisting of, referring to, or generated in connection with any marketing or marketing-related study or analysis regarding the relevance or importance of promoting oral health or hygiene in connection with the sale or offer for sale of Applicant's Goods or other personal care goods, including without limitation oral health or hygiene products marketed by Applicant.

17. All documents discussing or referring to the manner in which the terms "healthy" or any form of that word would, could, or should be used in connection with the sale or offer for sale of any goods under Applicant's Mark.

18. All documents referring or relating to each complaint, objection, opposition, cancellation, administrative proceeding, legal opinion or civil action within the United States involving Applicant's use of or application to register Applicant's Mark.

19. All documents summarizing or memorializing Applicant's actual or projected sales in the United States, in dollar amount, volume, or otherwise, of each of the goods bearing Applicant's Mark.

20. All documents referring to or reflecting whether a given good to be sold or offered for sale under Applicant's Mark would fall within the description of goods in Applicant's Application.

21. All documents referring or relating to Applicant's consideration or grant or obtaining of the right to use Applicant's Mark to or from another person or entity, including but not limited to trademark licenses granted or obtained by Applicant.

22. All documents referring or relating to the creation, design, production and preparation of copy for each item of advertising, promotional or publicity material using Applicant's Mark, including two (2) specimens of each completed item of advertising, promotion or publicity material.

23. All documents which support, refute, or otherwise relate to the allegations in the Notice of Opposition in this proceeding.

24. All documents which support, refute, or otherwise relate to your admissions and/or denials of the allegations in each Notice of Opposition in this proceeding.

25. All documents prepared by any expert that may testify on your behalf in this matter, including but not limited to any expert reports and curricula vitae.

26. All documents that you intend to introduce or may introduce as an exhibit in this matter, or otherwise submit to the Trademark Trial and Appeal Board (pursuant to Notice of Reliance or otherwise).

27. All documents reflecting your knowledge of any third-party uses, as a mark or otherwise, of the terms "health," "healthy," "toothbrush(es)," and/or "healthy toothbrush(es)".

28. All documents reflecting your knowledge of Opposer's use of Opposer's Marks.

29. All documents which tend to support any of the allegations in the Notice of Opposition.

30. All documents used to prepare Applicant's responses to each of Opposer's requests for documents and interrogatories to Applicant.

31. All documents upon which you rely in support of any admission or denial of any Request for Admission served upon you.

JOHNSON & JOHNSON

By: Jaye S. Yung

Norm D. St. Landau

Jaye S. Yung

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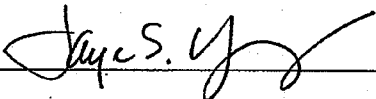
*Counsel for Opposer Johnson & Johnson*



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS**  
**FOR PRODUCTION OF DOCUMENTS AND THINGS** was served on Applicant this 11<sup>th</sup>  
day of July 2007, via first-class mail to:

Joseph C. Colaianni, Esq.  
Patton Boggs LLP  
2550 M Street, N.W., Suite 500  
Washington, DC 20037

  
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